

HOUSE BILL 3775

By Fitzhugh

AN ACT to amend Tennessee Code Annotated, Title 39, Chapter 13, Part 6 and Title 40, Chapter 6, relative to invasion of privacy for telecommunications subscribers.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 39-13-604(d)(1), is amended by deleting the language "construction, maintenance, conduct, technological research," and substituting instead the language "technological research solely related to the construction, maintenance,".

SECTION 2. Tennessee Code Annotated, Title 39, Chapter 13, Part 6, is amended by adding the following language as a new, appropriately designated section:

39-13-6__.

(a) As used in this section, unless the context otherwise requires:

(1) "Generally available data base" means a single collection of personally identifiable information generally used by a telecommunications carrier in the ordinary course of business. The personally identifiable information contained in such data base may include, but not be limited to, such information as:

- (A) Subscriber name and address;
- (B) Amount due;
- (C) Equipment;
- (D) Billing records;
- (E) Contracts with the subscriber;
- (F) Deposit information; and

(G) Payment information and billing adjustments;

(2) "Intercept" means to acquire, at any time from initiation to completion of a signal transmission over a telecommunications system, the content of the information contained in that signal;

(3) "Ordinary course of business" means:

(A) Telecommunications service from which personally identifiable information is derived; or

(B) Services necessary to, or used in, the provision of such telecommunications service, including the publishing of directories;

(4) "Personally identifiable information" means any information that identifies any person as a subscriber or user of a telecommunications carrier that otherwise provides information about that person or the person's use of any service provided by a telecommunications carrier except listing information published in white pages directories;

(5) "Subscriber" means any person who receives any form of telecommunications service and any other authorized user of a person's subscriber terminal;

(6) "Telecommunications" means the transmission between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received, by means of electromagnetic transmission, with or without benefit of any closed transmission medium, including all instrumentalities, facilities, apparatus, and services (including the collection, storage, forwarding, switching, and delivery of such information) essential to such transmission;

(7) "Telecommunications carrier" means any provider of telecommunications services;

(8) "Third party":

(A) Means a person other than the subscriber or a telecommunications carrier or any affiliate or agent thereof; and

(B) Does not include an interconnecting carrier or an organization whose objective is the detection, elimination or reduction of toll fraud, which has a demonstrable and reasonable requirement for personally identifiable information; and

(9) "Upstream communications channel" means a signaling path provided by a telecommunications carrier for the transmission of signals over a telecommunications system from subscriber terminals.

(b) A telecommunications carrier may collect, receive, store, aggregate, use, rent, sell, release or disclose personally identifiable information relating to any subscriber, subscriber household or user of a subscriber terminal only:

(1) To the extent necessary to provide the carrier's telecommunications services in the ordinary course of business;

(2) With the subscriber consent described in subsection (c);

(3) To detect the unauthorized receipt of telecommunications services, including cooperative efforts among carriers to detect, eliminate or reduce toll fraud;

(4) Pursuant to a court order or subpoena; or

(5) As specifically permitted by the federal communications commission or the public service commission.

(c)

(1) A telecommunications carrier shall notify a subscriber of the general circumstances under which personally identifiable information may be collected, used or disclosed.

(2) In the case of a subscriber contract entered into on or before the effective date of this act, the notice shall be provided within one hundred twenty (120) days immediately after such date. In the case of a subscriber contract entered into after the effective date of this act, notice shall be provided at the time that the contract is entered into. After the initial notice, additional notice shall be provided at least annually.

(3) Notice shall be given in clear and conspicuous writing.

(4) The telecommunications carrier shall not use personally identifiable information in a manner other than that described in the notice without further written notice to the subscriber and, as required by subdivision (b)(2), the consent of the subscriber.

(5) A subscriber, by written request to the telecommunications carrier, may withdraw the subscriber's permission at any time. This withdrawal shall take effect thirty (30) days after the subscriber notifies the telecommunications carrier that consent is being withdrawn.

(6) A telecommunications carrier shall not refuse to provide any telecommunications service to any person on account of that person's refusing to grant consent to collect, use or disclose personally identifiable information.

(7) A telecommunications carrier must obtain a subscriber's affirmative consent before the carrier may rent, sell, release or disclose the subscriber's personally identifiable information to a third party, except as authorized in

subsection (b). Such affirmative consent may be obtained only if the telecommunications carrier has notified the subscriber of the:

(A) Kind of personally identifiable information that the carrier will collect and the intended use of that information;

(B) Nature, frequency, and purpose of any disclosure of that information; and

(C) Persons to whom disclosure may be made.

(d)

(1) The use of personally identifiable information by those receiving the information from a telecommunications carrier is limited to the purposes for which the disclosure is made.

(2) Concurrent with, or prior to, the provision of personally identifiable information to others, a telecommunications carrier shall give notice to the person receiving the information. If personally identifiable information is provided on a continuing basis, notice shall be provided at the time of or prior to the provision of the first of such information and annually thereafter.

(3) No third party which has received personally identifiable information shall:

(A) Retain that information, if no longer needed for the purposes for which it was acquired; or

(B) Rent, sell, release, or otherwise disclose that information to any person, unless the third party does so pursuant to subdivision (c)(7).

(4) Every third party receiving personally identifiable information pursuant to this section shall certify annually to the information provider in writing that it is complying with subdivision (c)(7).

(e)

(1) A telecommunications carrier shall disclose to a subscriber all personally identifiable information which the carrier possesses pertaining to that subscriber stored on its generally applicable data base, upon written request of the subscriber. Such disclosure shall be made within thirty (30) days from the receipt of the subscriber's request.

(2) A subscriber may request to examine a copy of the information described in this section upon written request to the telecommunications carrier. The information supplied to the subscriber shall be in a legible format, which is capable of being understood by a reasonable person. The subscriber shall bear reasonable copying and mailing costs occasioned by the examination.

(3) A telecommunications carrier shall correct the information upon a reasonable showing by the subscriber that personally identifiable information contained therein is inaccurate. If the telecommunications carrier and subscriber cannot resolve a dispute about the accuracy of any information concerning the subscriber, then the subscriber may append to the carrier's record of information a statement setting forth the nature of the dispute. Such statement shall be retained in the carrier's records so long as the disputed information is retained. Within forty-five (45) days of receiving this notification from the subscriber, the telecommunications carrier shall transmit a corrected copy of the information, or the subscriber's appended statement, to any party which was given the erroneous information. Copies of all such correspondence shall be sent to the subscriber.

(f)

(1) Information derived from any signal of an upstream communications channel transmitted from a subscriber terminal for the purpose of monitoring individual household or communicating patterns shall not be disclosed except with the written authorization of the subscriber. Such authorizing document shall explain in clear and conspicuous language that information concerning the subscriber's viewing patterns or practices may be disclosed. The provision of telephone services shall be exempt from the requirements of this subdivision (f)(1).

(2) Except as otherwise provided by law, no person shall intercept a signal of an upstream communications channel transmitted from a subscriber terminal except the subscriber and the intended receiver of the signal.

(g) A telecommunications carrier shall maintain such safeguards as are necessary to ensure the physical and electronic security and confidentiality of any personally identifiable information concerning subscribers.

(h) No written authorization shall be required for a telecommunications carrier to conduct system-wide or individually addressed monitoring for the purposes of verifying system integrity, controlling return transmission paths, or for any purposes for which personally identifiable information may be lawfully acquired pursuant to this article.

(i) This section shall not prohibit the examination of aggregate data by, or the disclosure of such data to, any third party, provided that the data contains no personally identifiable information concerning any subscriber, the subscriber's household, or a user of the subscriber's terminal.

(j)

(1) Any person found to have violated this section, with gross negligence, shall be liable to the aggrieved subscriber for all actual damages sustained by

such subscriber as a direct result of the violation; provided, that any subscriber who prevails or substantially prevails in any action brought under this section shall receive not less than five hundred dollars (\$500) in damages, regardless of the amount of actual damage proved, plus costs, disbursements and reasonable attorneys' fees.

(2) Whenever there is a violation of this section, an application may be made by the attorney general and reporter in the name of the people of this state to a court having jurisdiction by a special proceeding to issue an injunction, and upon notice to the defendant of not less than five (5) days, to enjoin and restrain the continuation of such violation. If it appears to the satisfaction of the court that the defendant has, in fact, violated this section, an injunction may be issued by such court, enjoining and restraining any further violation, without requiring proof that any person has, in fact, been injured or damaged thereby. In any such proceeding, the court may make allowances to the attorney general as provided in Rule 54.04 of the Tennessee Rules of Civil Procedure. Whenever the court determines that a grossly negligent violation of this section has occurred, the court may impose a civil penalty of not more than one thousand dollars (\$1,000) for such violation. In connection with any such proposed application, the attorney general is authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with Tennessee Rules of Civil Procedure.

(3) The remedies provided by this section shall be in addition to any other lawful remedy available to a subscriber.

(4) No action may be brought under this section unless such action is commenced within two (2) years immediately from the date of the act complained of or of the date of discovery of such act.

SECTION 3. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 4. This act shall take effect July 1, 2012, the public welfare requiring it.